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## BOARD OF ELECTIONS

October 29, 2007

Mr. Ken Ulman  
Howard County Executive  
3430 Courthouse Drive  
George Howard Building  
Ellicott City, MD 21043

Re: Howard County Code Title 10 Subtitle 407(4)

Dear Mr. Ulman:

In March 2006, the Howard County Board of Elections brought to your attention, as a then member of the County Council; that the U.S. District Court for the District of Maryland found the Montgomery County Code referendum petition language, which was parallel to Title 10.407(4) of the Howard County Code, to be unconstitutional. The Attorney General's office prepared a memorandum to the local boards of elections regarding this issue as well (see attached). The Howard County Board of Elections ("Board") is writing to request the Howard County Council amend the above Title and Subtitle to ensure the constitutionality of the Howard County Code.

The Howard County Code Section 10.407(4) presently states:

As to any petition (including an associated or related set of petitions)  
under this article, it is unlawful for any person...

- (4) To give, pay or receive any money or other valuable consideration  
or inducement for signing the petition or **for securing the  
signatures thereon.** (Emphasis supplied.)

In Robin K.A. Ficker v. Montgomery County Board of Elections, 670 F.Supp 618 (1985), the United States District Court found the prohibition of paying individuals to secure signatures on a petition violated a person's right to free speech guaranteed by the First Amendment. See attached Ficker decision.

Mr. Ken Ulman  
October 29, 2007  
Page Two

The Board is again writing requesting that the County Council amend Howard County Code Section 10.407(4) to state as follows:


As to any petition (including an associated or related set of petitions) under this article, it is unlawful for any person...

- (4) To give, pay or receive any money or other valuable consideration or inducement for signing the petition.

The Board continues this request to ensure that our County Code is constitutional; to notify the public as to what the constitutional requirements are for placing a petition before the voters; and to clarify the Code to permit the staff of the Board to provide Howard County citizens with the accurate information related to having a petition voted upon by the voters.

The Board thanks you for considering an amendment to Section 10.407(4). If the Board can answer any questions you may have regarding this matter, we would be happy to do so.

Sincerely,

  
Ann M. Balcerzak, President  
Howard County Board of Elections

Enclosures  
cc: Jennifer Sager  
file

**TITLE 10**

**ELECTIONS AND ELECTION DISTRICTS**

- Sub. 1. Elections, § 10.100
- Sub. 2. Election Districts, § 10.200
- Sub. 3. Reserved
- Sub. 4. Referendum Procedures, §§ 10.400—10.410

- (14) North along Affeldt Road and continuing north cross-country to the point of beginning.

(c) *Election District 3:*

- (1) Beginning at a point on the South Branch Patapsco River at Gaither Road, the said point also being at the Howard County-Carroll County line, thence running:
- (2) East along the South Branch Patapsco River following the Howard County-Carroll County line to the North Branch Patapsco River at the Howard County-Baltimore County line;
- (3) Southeast along the Patapsco River following the Howard County-Baltimore County line to a point approximately 3,800 feet east of Woodstock Road, Md. Route 125;
- (4) South, cross-country to Affeldt Road and continuing south along Affeldt Road to Md. Route 99;
- (5) South, cross-country to Turf Valley Road and continuing south along Turf Valley Road to U.S. Route 40;
- (6) South, cross-country to Md. Route 144 at a point approximately 1,400 feet west of Manor Lane;
- (7) East along Md. Route 144 to Manor Lane;
- (8) South along Manor Lane to Md. Route 108;
- (9) West along Md. Route 108 to relocated Homewood Road (opposite Harpers Farm Road);
- (10) Northwest along Homewood Road to Folly Quarter Road;
- (11) West along Folly Quarter Road to Triadelphia Road;
- (12) West along Triadelphia Road to Linthicum Road;
- (13) North, cross-country to Old Rover Road at the intersection of Sharp Road;
- (14) North along Old Rover Road to Rover Mill Road;
- (15) North along Rover Mill Road for approximately 2,500 feet and continuing north,

cross-country to McKendree Road and continuing north along McKendree Road to I-70;

- (16) North, cross-country to Underwood Road at a point approximately 1,900 feet west to Day Road;
- (17) North along Underwood Road to Forsythe Road;
- (18) North along Forsythe Road to Gaither Road; and
- (19) Northwest along Gaither Road to the point of beginning.

(d) *Election District 4:*

- (1) Beginning at a point on the Howard County-Carroll County Line at Parrs Spring, thence running:
- (2) East along the South Branch Patapsco River following the Howard County-Carroll County line to Gaither Road;
- (3) Southwest along Gaither Road to Forsythe Road;
- (4) South along Forsythe Road to Underwood Road;
- (5) South along Underwood Road to a point 1,900 feet west of Day Road;
- (6) South, cross-country to McKendree Road at I-70;
- (7) South along McKendree to a point approximately 500 feet south of Md. Route 144 and continuing south, cross-country to Rover Mill Road;
- (8) South along Rover Mill Road to Old Rover Road;
- (9) South along Old Rover Road to Sharp Road;
- (10) South, cross-country to Triadelphia Road at the intersection of Linthicum Road;
- (11) Southwest along Triadelphia Road and the former alignment of Triadelphia Road to the Patuxent River;
- (12) Northwest along the Patuxent River following the Howard County-Montgomery County line to the origin of the Patuxent River; and

(5) *Fair summary* means a condensation of the law or part of the law petitioned and should include the major aspects of the law without destroying the substance and intent. Print size for summary shall be not less than 8-point bold print. The title of the bill being petitioned shall be deemed to be a fair summary.

(6) *Person procuring* means individual who personally collected the signature(s).  
(C.B. 19, 1976)

#### Sec. 10.401. Petition.

In every petition, there shall be appended to the signature of each signer his residence, election district and precinct wherein he is registered as a voter and immediately below the signature of any such signer, there shall be either printed or typed, the name of such signer.  
(C.B. 19, 1976)

#### Sec. 10.402. Form of petition.

(a) A petition may consist of several papers but each paper shall contain a fair summary of the act or the part of the act petitioned upon; and there shall be on each such paper an affidavit of the person procuring the signatures thereon that each signature thereon was affixed in the presence of the affiant and that to the best of his knowledge, information and belief, signers are registered voters of the State of Maryland in Howard County as set forth with their names.

(b) Signatures may appear on both sides of a paper and this paper shall be considered legally sufficient if on the side of the papers which does not bear a summary of the Law, there appears a notice, typed in no smaller than 8-point bold print, informing the signer that a summary of the law petitioned does appear on the opposite side of the page.

(c) Every page upon which signatures appear (both sides) shall contain the following statement in no less than 18-point bold print: "The purpose of this petition is to submit the law summarized herein to the voters in the next general election and to prevent said law from taking effect."

If such law being petitioned is an emergency bill, then any page upon which signatures appear (both sides) shall contain the following statement in not less than 18-point bold print: "The purpose of this petition is to submit the law summarized hereto to the voters in the next general election." Said emergency measure to remain in force until denied by a majority of the voters.  
(C.B. 19, 1976)

#### Sec. 10.403. Verification by board of supervisors of elections for Howard County.

The board of supervisors of elections for Howard County shall verify the registration of said petitioners and shall verify their signatures by comparing them with the voter registration cards, and shall verify the form of petition (section 10.402) and the statements of contribution and expenditures (section 10.408). The board shall forward to the county council the results of its verification process and advise the council if the question is to be certified.  
(C.B. 19, 1976)

#### Sec. 10.404. Certification by county council.

Upon receipt of the report from the board of supervisors of elections as to the matters hereinabove set forth, the county council shall certify the question and specify the wording which shall be placed on the ballot at the next general election in accordance with state law.  
(C.B. 19, 1976)

#### Sec. 10.405. Place and time of filing.

Any and all referendum petitions shall be filed with the board of supervisors of elections of Howard County during its normal office hours and within sixty (60) days after the law is enacted. If more than one-half but less than the full number of signatures required by charter to complete any referendum petition against such law is filed within sixty (60) days from the date it is enacted, the time for the law to take effect and the time for filing the remainder of signatures to complete the petition shall be extended for another thirty (30) days.  
(C.B. 19, 1976)

clared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if person or circumstances to which the act or any part thereof is inapplicable had been specifically exempted therefrom.

(C.B. 19, 1976)

ROBIN K. A. FICKER, Plaintiff v. MONTGOMERY COUNTY BOARD OF  
ELECTIONS, ET AL., Defendants

Civil Action No. R-85-4365

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

670 F. Supp. 618; 1985 U.S. Dist. LEXIS 12398

December 23, 1985, Decided

JUDGES: [\*\*1]

Norman P. Ramsey, United States District Judge.

OPINIONBY:

RAMSEY

OPINION:

[\*619] NORMAN P. RAMSEY, UNITED STATES  
DISTRICT JUDGE

Plaintiff Robin Ficker filed this action for injunctive and declaratory relief challenging the constitutionality of Md. Elec. Code Ann. Art. 33, § 23-5(4) under the First and Fourteenth Amendments of the United States Constitution. n1 There has been extensive briefing of the issues by counsel for both parties and the Court has heard testimony and oral argument from plaintiff and defendants. Since the facts are virtually uncontested and the issue is almost wholly an issue of law the Court will not make separate findings of fact, but will incorporate them in this Opinion. See *Fed.R.Civ.P.* 52(a).

n1 After a hearing held in open court on November 27, 1985, the Court denied plaintiff's request for a preliminary injunction and scheduled a hearing on plaintiff's motion for declaratory relief on December 11, 1985.

There is no dispute as to the essential facts. Plaintiff Ficker sponsored an [\*\*2] initiative on the Montgomery County ballot in the November 6, 1984 election seeking to establish a single-member district election plan in place of the current at-large system used to elect councilmen. In Maryland, a local charter may be amended through the process of initiative if the sponsor submits to the county election board a petition containing the signatures of 10,000 registered voters of that county. Md. Const., Art.

XI-A. n2 Plaintiff paid out \$ 2,637.30 to twelve campaign workers who aided plaintiff in securing the signatures necessary to place the initiative on the ballot. On November 6, 1984, plaintiff's initiative was defeated by the voters of Montgomery County. Plaintiff thereafter reported to the press that he would likely make an attempt to place the initiative on the November, 1986 ballot. In later November or early December, 1984, plaintiff was contacted by the Maryland State Special Prosecutor's Office and informed that his actions in putting the initiative on the ballot by paying people to obtain signatures was illegal and that if he continued to pay people to obtain signatures on initiative petitions he would be prosecuted under Md. Elec. Code Ann., Art. 33, [\*\*3] § 23-5(4) (hereinafter "§ 23-5(4)"). n3 Section 23-5(4) prohibits the payment of money or other inducements to any individual for securing signatures on a petition to place an initiative or referendum on a county or state ballot. Plaintiff contends that § 23-5(4)'s prohibition against paying petition circulators unduly restrains his rights under the First Amendment to speak out and encourage debate on political issues. In order to determine whether § 23-5(4) violates plaintiff's First Amendment rights, the Court must first determine whether it restricts speech. If it does, the Court must determine whether the restraints imposed are nonetheless justified as incidental to the promotion of a "substantial" or "compelling" governmental interest.

n2 Initiative is the mechanism provided in Maryland to enable voters to create and pass their own laws. Md. Const. Art. XI-A. Referendum is the process by which voters may approve or reject laws passed by the State legislature. Md. Const. Art. XVI. Plaintiff has only challenged the constitutionality of limitations on the payment of money to petition circulators for initiative measures. Accordingly, the Court limits its review of the constitutionality of Md. Elec. Code Ann., Art.

interest groups, and political machines. However, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 55 L. Ed. 2d 707, 98 S. Ct. 1407 (1978), the Supreme Court held that a state could not prohibit corporations from making contributions or expenditures advocating their views on ballot measures. This holding was later followed in *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, California*, 454 U.S. 290, 70 L. Ed. 2d 492, 102 S. Ct. 434 (1981), where the Court struck down a city ordinance which limited the ability of special interest groups to make contributions in favor of committees formed to support or oppose certain ballot measures. Accordingly, the State's interest in preventing corporations and special interest groups from using initiatives as a conduit for advocating their views does not constitute a sufficiently substantial interest to warrant the direct infringement on political communications.

[\*621] Defendants also contend that [\*\*9] the statute is necessary to insure broad based or authentic popular support for the initiative, and not just the support of corporations, special interest groups, or political machines. It seems clear that by permitting a sponsor to pay solicitors to go out into the community to gather signatures and to communicate the position of the sponsor to the public a broader base of public support or opposition will necessarily be developed. The record indicates that volunteers alone are insufficient to rally sufficient popular support to qualify an initiative for the ballot. n7 The Court does not contest the power of the state to condition ballot eligibility upon a prior demonstration of public support.

Accordingly, the state may set a higher number of registrant signatures to qualify an initiative for ballot should the state deem it necessary to assure broad based voter support. However, the Court does not accept the State's contention that it may impose expenditure limitations on the process by which that support is solicited. *Accord Hardie v. Fong Eu*, 134 Cal. Rptr. at 204. A limitation on expenditures for political communications during a campaign imposes direct and substantial restraints [\*\*10] on the quantity of political speech. *See Buckley*, 424 U.S. at 39. The Court finds that the State has not demonstrated a compelling interest to be served by barring expenditures for the solicitation of ballot signatures and accordingly holds that § 23-5(4)'s limitation on expenditure for petition solicitors in initiative measures is an undue infringement on the rights of political expression and to that extent is void.

N7 Ficker Affidavit at para. 6; supported by testimony at the trial on the merits. The Court so finds.

Counsel for the plaintiff will, within fifteen days from the date hereof, submit an appropriate Order to carry out the findings of this Memorandum Opinion.

The Clerk of the Court shall mail copies of this Opinion to all counsel of record.